

High Court rules that social landlords can use 2-month break clauses in long fixed-term assured shorthold tenancies (Livewest Homes Ltd v Bamber)

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Local Government analysis: Dingemans J has held that social landlords can issue 2-year plus fixed-term assured shorthold tenancies to tenants, but with a contractual break clause which allows eviction on 2 months' notice within a 'starter tenancy' period. Written by Adam Heppinstall, barrister, at Henderson Chambers.

Livewest Homes Ltd (formerly known as Liverty Ltd) v Bamber [\[2018\] EWHC 2454 \(QB\)](#)

What are the practical implications of this case?

If this judgment stands, then it means that a private registered provider of social housing (social landlord, PRPSH) can circumvent the rule that a 2-year plus fixed-term assured shorthold tenancy (AST) can only be ended without cause or fault under [section 21](#) of the Housing Act 1988 ([HA 1988](#)) when that fixed term comes to an end, if 6 months' notice that the fixed term is not going to be renewed has been given. This decision, if not appealed, means that the landlord can use a contractual break clause in an AST to end a fixed term early and then seek possession on 2 months' notice like a private landlord under [HA 1988, s 21](#). If a PRPSH wants to use probationary or starter tenancies, then they should do so, rather than seeking to combine a starter tenancy with a fixed-term 2-year plus tenancy using a break clause. Arguably, the Tenancy Standard issued by the Regulator requires a separate probationary or starter tenancy to be expressly issued. There should either be an urgent regulatory intervention to consider preventing PRPSH's from taking such steps or the legislation should be amended as soon as possible (although Brexit makes this unlikely).

What was the background?

Ms Bamber (claimant) was a tenant of a PRPSH called Livewest, which had granted her a 7-year fixed-term AST. Livewest tried to evict her in proceedings which were pending before the Court of Appeal, before they were resolved by consent such that, on 27 February 2017, Ms Bamber was granted a further 7-year fixed-term AST. Originally, assured tenancies with security of tenure (for the tenant for life and for their statutory successors) were for social tenants and ASTs with only a 6-month minimum security of tenure, for private tenants. The world has moved on and housing is scarce and now social tenants are regularly granted ASTs, sometimes initially on a minimum 6-month 'starter' tenure, moving on, if well-behaved, to a fixed term which extends at least beyond 2 or 5 years. If such a 2-year plus fixed term is not going to be renewed and the landlord wants the property back, it has to give 6 months' notice to remove the tenant ([HA 1988, ss 21](#) (1A), (1B)).

In this case, Livewest sought to combine a starter tenancy with a 2-year plus fixed-term tenancy by providing in the tenancy (as an express written clause) that within the first year (extendable to 18 months in certain circumstances) it could exercise a break clause to end the fixed term by giving 2 months' written notice. Social landlords are allowed to use starter tenancies (which are ASTs with a minimum tenure of 6 months or more (usually 12)), but in this case Livewest had effectively combined a starter tenancy with a fixed-term 2-year plus tenancy. [HA 1988, s 5\(1\)\(c\)](#) allows a landlord to end a fixed-term tenancy using a break clause. That does not, however, mean that the tenant has to leave on the expiry of the (in this case) 2-months' notice under the break clause, as once the fixed term ends, a statutory periodic tenancy arises. If, however, the landlord serves a section 21 notice to coincide with the service of the break notice, as is common in private landlord cases, then the court can make a possession order. The question in this case, was, given that the original term of the tenancy was 7 years, ie more than 2 years, did Livewest also have to give 6 months' notice because the original fixed term was not going to be renewed.

What did the court decide?

The idea behind [HA 1988, s 21](#)(1A and 1B) was to ensure that social tenants on fixed-term ASTs over 2 years in length would not be evicted from their homes (without fault or cause) at the end of their fixed-term on 2 months' notice like private sector tenants, but on 6 months' notice. What Livewest had done, in order to also have the benefits of a starter tenancy, was to circumvent that protection by introducing a landlord's contractual break clause to end the fixed term. This converts the tenancy to a statutory periodic tenancy such that the normal 2-month section 21 period applies, not the additional 6-month notice period. Effectively, Livewest had combined a starter AST with a fixed-term 2-year plus AST. Dingemans J found that in doing so, Livewest were relieved from having to serve a 6-month notice under [HA 1988, s 21\(1B\)](#). There was an odd debate before the court as to whether the tenancy before the break clause was exercised was a fixed term of more than 2 years, and Dingemans J initially found it was not such a tenancy because of the break clause, but happily he was forced to find to the contrary as the parties compromised that issue (which is obviously the right answer, because in determining the length of the tenancy you ignore the possibility that the break clause might be exercised).

Case details

- Court: High Court, Queen's Bench Division (Bristol)
- Judge: Dingemans J
- Date of judgment: 27 September 2018

[Adam Heppinstall](#) is a barrister at Henderson Chambers, and a member of LexisPSL's Case Analysis Expert Panel. Suitable candidates are welcome to apply to become members of the panel. Please contact caseanalysis@lexisnexis.co.uk.

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